Supreme Court, U.S.
FILED
APR 20 1994
OFFICE OF THE CLERK

(7)

NO. 93-1472

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

Wilburt A. Siegel, Petitioner,
vs.
JAMES ISLAND PUBLIC SERVICE DISTRICT,
et al, Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

Siegel's Reply Brief To Opposition Of: Respondents:

JAMES ISLAND PUBLIC SERVICE DISTRICT; its COMMISSIONERS; ROBERT E. WELCH; EDWIN B. QUINN.

COUNTY OF CHARLESTON:
J. ALTON CANNON, JR., its Sheriff;
ROBERT MILLER, its Undersheriff.

WILLIAM T. HOWELL, Judge.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT; P. DOUGLAS TAYLOR.

Wilburt A. Siegel, Pro se
1058 Bradford Avenue
Charleston, SC 29412-4046
Phone: 803-795-8586

24 pp

REPLY TO QUESTIONS

This Court should grant my petition to resolve the question whether a citizen of South Carolina can be wrongfully incarcerated in a State Prison's maximum security cell, with the willful participation of the Respondents, in violation of the United States Constitution's Amendment V and XIV; when their actions were under color of State Law, and the "Law" they themselves made; when they are liable under 42 U.S.C. §1983.

TABLE OF CONTENTS

	Page
REPLY TO QUESTION	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
PARTIES INVOLVED	1
OPINIONS AND ORDERS BELOW	2
JURISDICTION	3
STATUTORY PROVISIONS INVOLVED ..	4
STATEMENT OF THE CASE	4
SUMMARY OF THE ARGUMENT	5
ARGUMENT	6
James Island PSD; Commissioners; Welch, Quinn	11
Charleston County; Cannon; Miller	13
William T. Howell, Judge	15
South Carolina Dept. of Corrections; Evatt; Taylor	18
CONCLUSION	20

TABLE OF AUTHORITIES

CASES	Page
BRADLEY VS FISHER..... S.C. 13 Wall. 335 (No. 118) (1872)	16
HAFER VS MELO, et al ..... (112 S. Ct. 358, 60 US LW 4001) (1991)	19
LUCAS VS SOUTH CAROLINA COASTAL COUNCIL ..... (112 S. Ct. (1992)	6
McCALL VS BATSON..... 329 SE 2d 741 (1985)	6
WILL VS MICHIGAN DEPT. OF STATE POLICE ..... 491 U.S. 58 (1989)	19
CONSTITUTIONAL AMENDMENTS: XIV.....	20
FEDERAL STATUTES:	
28 U.S.C. §1254(1).....	3
28 U.S.C. §1257(3).....	3
42 U.S.C. §1983....	passim
Rule 12(b) FRCP.....	6
South Carolina Code of Laws:	
6-11-280.....	17
15-78-10.....	7
24-3-10.....	14
24-3-20.....	14

NO. 93-1472

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

Wilburt A. Siegel, Petitioner
vs.
JAMES ISLAND PUBLIC SERVICE DISTRICT,
et al, Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

Siegel's Reply Brief To Opposition Of:
Respondents:

JAMES ISLAND PUBLIC SERVICE DISTRICT; its
COMMISSIONERS; ROBERT E. WELCH;
EDWIN B. QUINN.

COUNTY OF CHARLESTON:
J. ALTON CANNON, JR., its Sheriff;
ROBERT MILLER, its Undersheriff.

WILLIAM T. HOWELL, Judge.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS;
PARKER EVATT; P. DOUGLAS TAYLOR.

From the facts before the Court it is clear the Respondents (jointly and/or severally) have and will continue to violate my civil, legal and vested rights.

OPINIONS AND ORDERS BELOW

Appendix "A", Pet. Pg. 1-A - 5-A:

The United States Court of Appeals for the Fourth Circuit accepted the reasoning of the Charleston, South Carolina District Court to dismiss all defendants in this civil rights case, where I was wrongfully incarcerated in a State Prison for the crime of not being able to connect to a crushed-full-of-roots sewerline, improperly installed in the state highway drainage ditch-17" cover.

Appendix "B", Pet. Pg. 6-A - 9-A:

The Order of the South Carolina District Court at Charleston accepted the recommendation of the Magistrate Judge in dismissing all defendants.

Appendix "C", Pet. Pg. 10-A - 48-A:

The Charleston South Carolina Magistrate Judge's Report and Recommendation dismissing all defendants prior to discovery and trial by jury.

JURISDICTION

My appreciation to the Respondents for calling attention to my error in stating 28 U.S.C. §1257(3), rather than 28 U.S.C. §1254: Courts of appeals; certiorari; certified questions:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

This case of threats, multiple arrest warrants, court cases, wrongful incarceration and $100/day/fine/lien on property for the infamous "crime" of not being able to connect to an improperly installed sewerline is such a departure from the accepted and usual course of judicial proceedings that the entire facts of this "Sewergate" cries out for the attention of this Honorable Court.

STATUTORY PROVISIONS INVOLVED

Section 42 U.S.C. §1983 provides in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in action at law, suit in equity, or proper proceeding for redress."

STATEMENT OF THE CASE

In 1979 I paid the permit to become one of the first customers of the James Island Public Service District's Wastewater Collection System, installed in a swiss-cheese pattern of the District.

An improper sewerline was installed for 1058 Bradford Avenue. Yet, criminal and civil court action, wrongful incarceration, fine/lien resulted.

SUMMARY OF ARGUMENT

The Respondents highlight why this Court should grant my petition. They cite some 97 case laws as authority for their lack of accepting responsibility in denying me the right to be free.

When such a conundrum exists as is shown in the record I feel this Court's attention to the abuse of power and deprivation of my Constitutional rights is warranted, and would be greatly appreciated by an American citizen that my Petition for Certiorari be granted.

This Court could search every law library in America and never find a case whereby a citizen expected and paid for a safe-proper sewerline and was denied, until after my wrongful incarceration backfired on all the Respondents.

I was not guilty of menacing the health, safety, morals and welfare of the people of this State and Nation.

ARGUMENT

After the Charleston, South Carolina District Court inadvertently dismissed all defendants pursuant to Rule 12(b), FRCP, this Court ruled that South Carolina Agencies can err as in the case of LUCAS VS. SOUTH CAROLINA COASTAL COUNCIL (112 S. CT. 2886 (1992) property/liberty rights are important.

JUSTICE KENNEDY concurring in the judgment:

> "The case comes to the Court in an unusual posture ...whatever may occur in the future cannot undo what has occurred in the past.
>
> ...It is well established that temporary takings are as protected by the Constitution as are permanent ones".

The Respondents ignore the case of McCALL VS. BATSON, 329 SE 2d 741 (1985) as the Supreme Court of South Carolina "abolished the doctrine of sovereign immunity as it applies to the state...".

That case overruled some 122 cases to the extent that they hold an action may not be maintained against the State without its consent.

The result of that case was the General Assembly enacting S. C. Code of Laws §15-78-10, etc., declaring that claims against state agency is not barred from liability.

January 11, 1989: NEWS AND COURIER: "SIEGEL GOES TO JAIL IN SEWERLINE FIGHT": (Front page: 6" x 5" colored picture, Undersheriff Miller with Siegel and friends):

> Cannon arrived at the Siegel home shortly after 9 a.m. Wednesday to arrest the 73-year old on contempt of court charges.
>
> ...Order was passed down by 9th Circuit Judge William T. Howell that he tap in to the James Island Public Service District sewer system by Wednesday or face a six-month jail term.

The contempt of court charges could continue..."In other words, I have a life sentence for not hooking up," said Siegel, who left his American-flag-draped house Wednesday clutching a cane.

At the prison, Siegel was photographed, fingerprinted and will be kept in an evaluation center for the next few days. He was issued prison clothing - jeans, shoes, shirt and jacket - and will have a private cell.

He will undergo physical and mental testing and is being held in the maximum-security section used to orient new prisoners. He may be transferred to another prison once his status is defined, according to prison officials.

...within the James Island Public Service District ...more than 125 houses have not tapped in. The PSD is pursuing liens against those properties...

The PSD further says the Siegels are required to tap in as part of a stipulation in a Farmers Home Administration grant that paid for part of the island's sewer lines.

Interestingly, the Farmers Home Administration (USDA) in Columbia, S. C.

provided a "DECLINATION FORM" that is applicable throughout the United States; if a citizen cares to maintain their proper, approved by the Health Department septic system..such as we have.

January 13, 1989: NEWS AND COURIER: "STATE SPRINGS SIEGEL AFTER ONE DAY BEHIND BARS":

> Francis X. Archibald, spokesman for the state Department of Corrections, said that after Siegel was processed, the prison system's legal advisors discovered the prison did not have authority to accept anyone on civil contempt charges.
>
> The ruling was later backed up by state Attorney General's office, Archibald said.

January 14, 1989: THE EVENING POST: "JUDGE, STATE AT ODDS IN SIEGEL CASE": -

> The rejection of Wilburt Siegel from Lieber Correctional Institution now puts at odds the power of a circuit judge, the state Department of Corrections and the Constitution of South Carolina.

> ...Parker Evatt, commissioner of the Department of Corrections, ordered Siegel released.
>
> "Anybody can bring someone to my door and say, 'Take this person,'", Evatt said, "but we're here to take only those persons the prison system is authorized to accept".
>
> Sheriff Cannon said Friday that he is waiting for "some authority" to tell him if he must house Siegel and either uphold or override the decision of the Judge that sent Siegel to jail. "All I know is that I complied with the judge's order", he said. "Basically, I'm just sitting in a position now of waiting for some authority to tell me what to do. In a sense, our office was just a taxi service" for Siegel's transfer.
>
> ...Stay was granted by Ninth Circuit Judge William T. Howell, the man who originally ordered Siegel to jail.

Constitutional rights are virtually meaningless if such a case as this is allowed to be plowed under when the magnitude of the mistakes of the Respondents dilutes responsibility of elected officials and their employees.

April 15, 1994 Brief in Opposition to my petition was received from: Respondents: JAMES ISLAND PUBLIC SERVICE DISTRICT; its Commissioners; Robert E. Welch; Edwin B. Quinn.

The lower courts erred in holding my Complaint failed to allege facts indicating that these Respondents created the action and finally succeeded in obtaining my wrongful incarceration, as the record shows they started with the criminal arrest warrant in 1981, which was unconstitutional; they are liable under 42 U.S.C. §1983.

The Doctrine of res judicata does not apply when certain legislative acts and statutes were and are unconstitutional in the Respondents' practice of intentionally depriving me of my civil rights when they lacked juridiction to appear in both criminal and civil Court with an illegal Wastewater Resolution.

IRONICALLY, February 2, 1989 the Court, the above Respondents and their attorneys would purge the CONTEMPT ORDER - definite 6-months Charleston County Jail, Public works; not Lieber Prison as was ordered January 6, 1989, executed January 11, 1989, subject to provisions:

> The District would extend the sewer line 43' to the center of the Siegel residence, at the expense of the District; using care not to unreasonably damage the Siegel property.
>
> The District and Mr. Siegel do not intend that the Consent Order should be construed or constitute any admission of law or fact by either party.

WHAT WERE THE RESPONDENTS ADMITTING AFTER 8½+ years? They succeeded in getting what they wanted January 11, 1989...my incarceration in a State Prison maximum security cell and the publicity to scare the hundreds who failed to connect to their sewerline.

April 15, 1994 Brief in Opposition to my petition was received from: Respondents: COUNTY OF CHARLESTON; J. ALTON CANNON, JR., Sheriff; ROBERT MILLER, Undersheriff.

The full record in the lower court shows the Charleston County Councilmembers, the Sheriff and Undersheriff are charged with upholding their citizens civil rights, they did not.

The Sheriff, Undersheriff and deputies did enter my home; I was transported to a State Prison; rejected after 28 hours in a maximum security cell because I was not supposed to be there. WHY?

Respondents are not "ABSOLUTELY IMMUNE" by virtue of the "operation of derivative judicial immunity"; that excuse was overthrown at the German trials after World War II; rather, they are liable by virtue of "derivative tort".

William Pitt knew the Crown was strong, he wrote:

> "...the poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail - its roof may shake - the wind may blow through it - the storms may enter but the King of England cannot enter - all his force dares not cross the threshold of the ruined tenement".

The lower courts erred in holding the above Respondents are absolutely immune from liability under 42 U.S.C. §1983 for their participation in depriving me of my liberty; Judge Howell lacked jurisdiction to select the prison. §24-3-10 and §24-3-20 (Pet. 71-A-73-A).

At the hearing before Judge Howell, six hours after I was rejected from State Prison, County Attorney stated:

> "Charleston County takes the position that we turned him over to the appropriate authorities...We asked for a hearing because he was deposited in effect back to the sheriff, who really does not have custody of him".

April 16, 1994 Brief in Opposition to my petition was received from: Respondent: WILLIAM T. HOWELL, JUDGE.

The lower courts erred in holding that Judge Howell was absolutely immune from liability under 42 U.S.C. §1983 for issuing an Order to have me incarcerated at Lieber State Prison when he lacked jurisdiction to do so.

There is a vast distinction between an erroneous exercise of authority and a usurpation of authority; such as I believe Judge Howell did in this case.

The full record in the lower court includes transcript of trials held before Judge Howell.

When he found me in willful contempt of court for being unable to do the impossible - connect to a crushed, improper sewerline at the cost of $2,000. to prove the sewerline was wrong, he remarked:

> "Well, you'll have to move out of your house then...You see, they've asked me to hold you in contempt and I really have little choice in the matter.. If I don't take action on this they're going to hold me in contempt." ...

I ask the Court to consider the applicability of this case as to the reasoning in BRADLEY VS FISHER, S. C. 13 Wall. 335 (No. 118) (1872); it states:

> "Where there is no jurisdiction there can be no discretion, for discretion is incident to jurisdiction.
>
> The discretion vested in courts, where private rights are concerned, is judicial, not unlimited.
>
> It must not be arbitrary, vague and fanciful.
>
> A judge or any person acting by authority as such, where he has over the subject matter and over the person, a general jurisdiction which he has not exceeded, will not be liable to have his judgment examined in an action brought against him; but if the jurisdiction be wanting over the subject matter and over the person, such judgment would be examinable".

By no stretch of interpretation can it be said Judge Howell had jurisdiction over me - a rejected prisoner.

The afternoon I, State Prison No. 153926, was rejected from Lieber Judge Howell asked someone to appeal his second order of incarceration; he then stayed that Order, so how could he later "abate" it while under appeal?

When Judge Howell was confronted with his clear lack of jurisdiction in usurping the statutory authority of the prison official, he then "abated" his Order of incarceration at Lieber Prison: NEWS: SIEGEL GETS FINE NOT TIME.

He was again outside his jurisdiction to Order a $100/day/fine/lien on property, when he succeeded in having me wrongfully incarcerated. His authority was stated as South Carolina Code of Laws §6-11-280 (I have been unable to locate that law).

April 16, 1994 Brief in Opposition to my petition was received from: Respondents: SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT; P. DOUGLAS TAYLOR.

The lower courts erred in holding that a state agency and its employees/ and/or/administrators were immune from liability under 42 U.S.C. §1983 for their actions in accepting me into their maximum security prison, rejecting me, destroying my record - because I was not supposed to be there.

Judge Howell stated at his status conference the Prison was waiting to accept me back; there is every chance I will be in jeopardy as Judge Howell also stated at the end of his third Order "An additional status conference may be scheduled in the future"...what does my future hold?

Certainty and stability in the law?

Certainly there was someone with authority at Lieber state prison who accepted me from the custody of Charleston County Sheriff Cannon, they mugged, fingerprinted, female persons examined me-causing much bleeding from my rectal cancer.

Does the Prison system open wide their gates to the whim of any Judge or Sheriff?

This Court held in HAFER VS MELO, et al (112 S. Ct. 358, 60 US LW 4001):

> In WILL VS. MICHIGAN DEPT. OF STATE POLICE, 491 U.S. 58 (1989), we held that state officials "acting in their official capacities: are outside the class of "persons" subject to liability under 42 U.S.C. §1983. 491 U.S. at 71. Petitioner takes this language to mean that §1983 does not authorize suits against state officers for damages arising from official acts. We reject this reading of WILL and hold that state officials sued in their capacities are "persons" for purposes of §1983.

CONCLUSION

The history of this unnecessary "Sewergate", originating in Criminal Court, then Civil Court, then my wrongful incarceration in a State Prison; in clear absence of Jurisdiction and in violation of State Statute...is a great violation of my Federal Constitutional civil rights - when I had to practice "Buyer Beware".

My prayer is this Honorable Court will grant my petition for a writ of certiorari as the lower court decided incorrectly in dismissing all Respondents, prior to discovery, when they are liable under 42 USC §1983. (Amend. XIV).

Most respectfully yours,

Wilburt a. Siegel

Wilburt A. Siegel, Petitioner
1058 Bradford Avenue
Charleston, SC 29412-4046
Phone: 803-795-8586

April 19th, 1994